

July 22, 2005

Mr. Michael Gallagher
Ecology PBT Coordinator
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Comments on Ecology's Proposed PBT Rule [Chapter 173-333 WAC, Persistent Bioaccumulative Toxins]

Dear Mr. Gallagher:

The American Chemistry Council (ACC) and the Chlorine Chemistry Council (CCC) appreciate this opportunity to submit comments on Ecology's proposed PBT Rule (Chapter 173-333 WAC Persistent Bioaccumulative Toxins). The members of both ACC and CCC are committed to the goal of reducing the potential human health and environmental risks associated with PBTs.

Overall, the proposed Rule represents a sound approach to PBT chemicals management, and we would recommend that Ecology apply the processes proposed in the Rule, with the few key changes discussed here, for a minimum term of three to five years before making significant changes. ACC and CCC's recommendations will help strengthen the proposed approach.

1. Goal

ACC and CCC urge Ecology to consistently promote, throughout the Rule, the recognition that the long-term goal of the program is to reduce the threat of PBTs to humans and the environment by "reducing, managing **or** eliminating" these chemicals. Some of the language currently refers to a goal to "reduce **and** eliminate" PBTs. A more pragmatic approach provides Ecology with the fullest range of options for addressing the complex issues surrounding PBTs in the state. For example, eliminating human exposure to dioxins is unrealistic because, according to the United States Environmental Protection Agency, the largest sources are naturally occurring, i.e. forest fires.

2. Public Participation

ACC and CCC commend Ecology's commitment to employing an open and transparent process while developing the proposed Rule. We have actively supported the public involvement called for in Ecology's decision-making processes for identifying PBTs and developing chemical action plans (CAPs). The successful involvement of the Advisory Committee is evidence that allowing interested stakeholders to participate in the process enhances transparency and allows Ecology to make better informed decisions regarding the effective management of PBT chemicals.

We urge Ecology to ensure that this rule and *any subsequent changes* are promulgated following the requirements of the Administrative Procedure Act (APA), RCW 34.05 so that the process will continue to be open and accessible to the public.

3. Science-Based Approach

Ecology should continue to take a science-based approach to their assessment of chemicals. The proposed Rule is appropriately guided by sound science and risk assessment, rather than utilizing a purely precautionary approach based on hazard characteristic alone. Importantly, a science and risk-based approach is not at odds with precaution because risk assessment practices, including the use of conservative safety factors, reflect precaution. Risk assessment is the essential component in making “precautious” decisions and will allow Ecology to most effectively manage potential risks to human health and the environment by providing a means to set priorities. It is a well-established process to combine knowledge about hazard, use and exposures to make decisions about risks in context.

The public interest dictates that policy-making must follow a thorough, objective examination of all available scientific evidence. Science helps take the guesswork out of policy making, increases knowledge, reduces uncertainty, and is a critical component of the public’s right to know.

In making PBT chemical management decisions, sensible precaution should include a full assessment of the level of uncertainty and the benefits that might be sacrificed if the products and technologies in question are restricted or otherwise called into question. The assessment process should also factor the uncertainties and risks that accompany potential alternatives into any decisions. The proposed Rule rightly incorporates necessary elements of science and risk prioritization.

4. PBT Criteria

The process for developing, amending, and removing chemicals from the PBT list should include an assessment of exposure levels to determine if further action is warranted or whether a chemical might be removed or shifted to another category. Relying solely on the PBT criteria does not give a complete picture of the risk presented by the chemical because a chemical’s intrinsic characteristics will not change. Overall, the PBT criteria should be consistent with internationally recognized criteria that have already been negotiated. (See Section 5 below.)

5. Consistency with Other Governmental Entities

It is important to recognize that programs are in place at the national, regional and international levels to manage PBTs or specific subsets of PBTs¹. In most cases PBT chemicals are either strictly regulated or are not currently in production. Furthermore, many companies already have

¹ For example, the subset of PBTs known as Persistent Organic Pollutants (POPs) are controlled under the Stockholm Convention on Persistent Organic Pollutants. POPs are subject to long-range transport by air and water and that characteristic makes them appropriate for control under an international regime.

taken considerable risk management action on PBTs. Combined, these efforts have resulted in a substantial reduction in the levels of PBTs in the environment.

In WAC 173-333-140 Section (5), the Rule should emphasize coordination with federal, regional, and international entities. Such coordination is important to avoid duplicating ongoing initiatives at these other levels of government and allows Washington to determine the optimum role the State could play in furthering the numerous federal, regional and international efforts aimed at reducing risks posed by PBTs. Such coordination also permits the State to focus its resources on programs that will provide the most tangible and significant results possible. There are numerous international and regional efforts already underway to address PBTs, including:

- Efforts by the U.S., Canada and Mexico to develop regional action plans for specific PBTs under the Commission for Environmental Cooperation's Sound Management of Chemicals Initiative.
- The U.S – Canada Binational Toxics Strategy.
- Implementation of the U.N. Economic Commission for Europe (UNECE) Protocol to the Long-Range Transboundary Air Pollution Convention on Persistent Organic Pollutants (POPs).
- Implementation of the Stockholm POPs Convention.

As an example, Best Available Techniques and Best Environmental Practices (BAT/BEP) have been successfully employed around the globe in significantly reducing PBTs releases to the environment. Through use of BAT/BEP many countries have been successful in dramatically reducing the levels of PBT substances, in many cases by more than 90%. Technology driven solutions are workable and produce dramatic improvements without the negative socio-economic consequences associated with a zero discharge mindset and a strategy of "elimination."

EPA is also moving on a number of PBT-related initiatives. In 1998, EPA issued a draft Multimedia Strategy for Priority Persistent, Bioaccumulative and Toxic (PBT) Pollutants (63 Fed. Reg. 63926, Nov. 17, 1998). The Strategy is aimed at coordinating PBT policy across the Agency's various programs. EPA has implemented the Strategy in specific PBT related initiatives under the Toxic Substances Control Act (TSCA), the Resource Conservation and Recovery Act (RCRA), and the Emergency Planning and Community Right-to-Know Act (EPCRA).

Importantly, the 'reduce, manage or eliminate' approach taken by Ecology is consistent with federal, regional, and international approaches to PBTs. With this shared objective, it will be easier to utilize and, where appropriate, adopt the reduction and elimination approaches developed and implemented in those venues. It is important that Ecology adopts PBT definitions, criteria and cut-off values that are consistent with those set by international, regional, and national venues. Differences in these criteria lead to confusion, inefficiency, work duplication and inconsistency in regulatory decisions. Perhaps more importantly, these differences prevent society from focusing its limited resources on priority substances. There are internationally recognized criteria that should be used to evaluate chemicals for P, B, and T characteristics.

Screening of PBT characteristics is a critical step for identifying candidate substances rapidly. However, screening of PBT characteristics is only the starting point for conducting appropriate risk assessments to determine if new or additional risk management efforts are necessary.

Finally, emphasizing coordination with existing federal, regional, and international initiatives will also further underscore the importance of regulatory consistency called for in WAC 173-333-420 Section (2).

6. Chemical Action Plans

We applaud Ecology for proposing a focused and workable list of recommended policy options for Chemical Action Plan (CAP) development. Successful CAPs will give full consideration to the possible risk reduction actions, including reduction or elimination of uses and releases, waste and product management, and exposure minimization, coupled with a feasibility analysis and measures of effectiveness. CAPs should be based on a proper characterization of the actual risk presented by the chemical, including an accounting of sources within the state – both natural and manmade. With the goals of managing, reducing, or eliminating the chemical, it is important to recognize that eliminating exposure to a particular chemical is not always possible because significant natural sources, or those outside the state, may contribute to a chemical's presence (e.g., dioxins/furans). Ecology's "reduce, manage or eliminate" approach allows for feasible policy options that will result in focused, achievable CAPs to address PBT chemicals considered to pose risks to the State of Washington.

In developing CAPs, Ecology should also consider utilizing existing risk assessment documents developed by EPA and other reputable governmental agencies (for example, risk assessments developed by EPA's National Center for Environmental Assessment). Using existing assessments avoids duplicative work for Ecology as they examine the human health and environmental impacts a PBT chemical may pose in Washington.

As called for in Section 420 (1)(c), a CAP should be based on an assessment of existing levels in the environment and evidence of adverse effects to human health or the environment. A determination of whether measures already in place are appropriate to protect human health and the environment is also critical to guiding Ecology's priorities and determining whether or not there is a need for Ecology to take additional actions to address a particular chemical.

As was discussed during the development of the proposed Rule, Ecology should recognize in the Rule that available substitutes must be evaluated for feasibility and potential risks just as the chemical for which the CAP is being developed. Substituting the risks presented by one chemical for known and unknown risks presented by another may lead to little or no benefit to human health or the environment.

The success of a CAP will also be enhanced by consideration of the factors Ecology lists for evaluation in the development of recommended actions in the CAPs.² Feasibility, human health and environmental benefits, economic and social impacts, and consistency with existing federal

² WAC 173-333-420 Section 1(f(i)).

and state regulatory requirements are critical factors in a CAP's ability to effectively manage, reduce, or phase-out PBT uses and releases.

By including measuring and monitoring requirements for the steps proposed in the CAPs,³ Ecology will better be able to determine the effectiveness of those actions. If it is determined that the actions are not protecting human health and the environment as desired, the appropriate revisions can then guide the CAP toward a more successful outcome. Overall, Ecology needs to approach the preparation of any CAP with realistic expectations about what can be accomplished and the benefits that will actually accrue to the people and environment of the State of Washington. Applying this approach will permit Ecology to assure that CAPs adopt the "least burdensome alternative"⁴.

7. Section-specific Comments

- a. Section 410 (2) – The reference should be to Section 320 instead of 302.
- b. Section 420 (1)(a) – It is not clear if Ecology will be identifying individual manufacturers or industry sectors in the CAPs, recognizing that a list of manufactures will likely be an incomplete list. The initial CAP should focus on a recognized sector as a source, with future efforts devoted to working with representatives of that sector for more specific actions, e.g. categorizing releases, etc.
- c. Section 420 – It is not clear if the CAPs will include statements on what the recommended actions can reasonably expect to accomplish in terms of reduced exposure to residents. If specific actions are proposed to reduce or eliminate exposure, it is logical to identify the extent to which each action will impact exposure. This will provide a context for the Department's recommendations, allowing Ecology to demonstrate that the proposed actions are targeting priority sources.

8. Conclusion

Overall, with a few key changes, the proposed PBT Rule represents a workable approach to PBT chemical management. We recommend that Ecology apply the process presented in the Rule in its proposed form for a term of three to five years to allow time to learn the Rule's strengths and limitations. Upon future evaluation, Ecology could make necessary changes and begin adapting the criteria to add or drop specific substances. Given the careful thought and discussion Ecology and the Advisory Committee devoted to the development of the proposed Rule, Ecology should now give the process a chance to work.

³ WAC 173-333-400 Section (1)(f)(iii) and WAC 173-333-420 (2)(e).

⁴ RWC 34.05.328 (1)(e)

Thank you for this opportunity to comment on this Rule. If you have any questions about these comments, please direct them to Greg Merrill, at (703) 741-5417, or to Mike Walls, at (703) 741-5167.

Sincerely,



Michael P. Walls
Managing Director
Health, Products and Science Policy
American Chemistry Council



Clifford T. "Kip" Howlett, Jr.
Executive Director,
Chlorine Chemistry Council
Vice President
American Chemistry Council

cc: Association of Washington Business